

REMARKS

Claims 1-14, and 16-19 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Otsubo et al. (US Patent Publication No. 2002/0151864). This ground of rejection is respectfully traversed.

The Examiner states that Otsubo et al. discloses a disposable protective undergarment having a pants-shaped chassis1, a front waist portion 11, a belly portion 2, a rear portion 12, a rear back portion 3, a crotch portion 4, and leg openings 41. According to the Examiner, Otsubo et al. discloses in paragraph [0022] that lower edge 13 is curved, and that the curvature is clearly shown in FIG. 1 of the reference. Applicants respectfully disagree with this interpretation of the reference as explained in more detail below.

In order for a claim to be anticipated by a reference, that reference must disclose each and every element of the claimed invention. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) ("The identical invention must be shown in as complete detail as is contained in the . . . claim."). "[T]he [Examiner] must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference." *Lindemann Maschinenfabrik GmbH*, 221 U.S.P.Q. at 485.

Applicants submit that Otsubo et al. actually discloses in paragraph [0022] that the "periphery of the lower edge 13 of the front waist region sheet 2 draws a curved line which is convex upward". Similarly, paragraph [0023] of Otsubo et al. discloses that the "periphery of the lower edge 14 of the rear waist region sheet 3 draws a curved line which convex downward". It is applicants' position that a periphery of an edge that **draws** a curved line does not require the edge itself to be curved, and accordingly the reference does not actually disclose that the lower edge is curved. Applicants note that, contrary to the Examiner's interpretation of FIGS. 3 and 4, FIG. 6 of the reference shows that the edge portions are substantially straight. Accordingly, applicants submit that the edge portions of Otsubo et al. are substantially straight, and at the least, do not amount to arcuate (concave or convex) edge portions as presently claimed.

Further, applicants note that, as illustrated by FIG. 1 of Otsubo et al., the lower edge of the front portion appears substantially straight in contrast to the Examiner's assessment that it is curved, and FIG. 2 of Otsubo et al. shows this phenomenon more elaborately, wherein the lower edge of the rear portion clearly appears substantially straight. Although when in use these straight edges may **draw** a curved line, this does not amount to the arcuate (convex or concave) edge portions as claimed.

The claims have now been amended further to recite that the leg openings have substantially S-shaped arcuate edge portions. The front section of the leg openings have concave recesses forming high-cut upper portions, while the rear sections have convex projections forming the lower portions of the leg openings. Support for this amendment is found in the specification at pages 15 and 16 of the specification. These features are neither disclosed nor taught in the reference.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being obvious over Otsubo et al., ("Otsubo"), further in view of Goode et al. (U.S. Patent No. 5,843,056). Applicants respectfully traverse this rejection for at least the following reasons.

Three criteria must be met to establish a prima facie case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. (See MPEP § 2143).

As discussed above, applicants' absorbent garment is structurally different from the Otsubo et al. absorbent article, and that such differences are neither taught nor suggested in the references. Accordingly, any combination of Otsubo et al. and Goode et al. would still fail to render the presently claimed invention obvious to one of ordinary skill in the art.

Claims 1-6 and 14-19 also stand rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1, 8, 9, 11, 12-20 and 24 of U.S. patent No. 6,607,515.

In order to expedite the prosecution of this application, applicant would be prepared to file a terminal disclaimer in order to obviate this rejection should the application otherwise be in condition for allowance.

Accordingly, the present application is now believed to overcome the remaining rejections, and to be in proper condition for allowance. Entry of the foregoing amendment is deemed appropriate at this time. Reconsideration of the rejections, and allowance of this application, are therefore respectfully solicited. The Examiner is invited to contact the undersigned at the telephone number listed below to facilitate the prosecution of this application.

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